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**NEVADA OFFICE**  
LAS VEGAS

**DISTRICT OF COLUMBIA OFFICE**  
WASHINGTON, D.C.

July 9, 2012

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Emerson's Knives, Inc.  
1234 254th St.  
Harbor City, CA 90710

Mr. Ernest Emerson  
1234 254th St.  
Harbor City, CA 90710

**Re: Notice of Violation and Intent to File Suit Under  
the Federal Water Pollution Control Act**

To Mr. Emerson:

We write on behalf of Scott Vollero, owner of neighboring facility known as Autocats, Inc. in regard to violations of the Clean Water Act<sup>1</sup> and the State of California's Storm Water Permit occurring at the Emerson's Knives, Inc. facility located at 1234 254<sup>th</sup> Street, Harbor City, CA 90710 (the "Facility"). Information available to us indicates that Ernest Emerson is the owner and operator of the Facility ("owner/operator").

We have been informed that you have discharged pollutants unlawfully from the Facility into local waterways. Further, you have engaged in violations of the substantive and procedural requirements of the Storm Water Permit. These violations of the Storm Water Permit are violations of the Clean Water Act. The Clean Water Act provides that an owner and/or operator are liable and subject to civil penalties for violations of its provisions. As owner and/or operator of the Facility, you are liable and subject to civil penalties for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, a citizen must give notice of his/her intention to sue. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the

<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. section 1251, et. seq.

State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. This letter is being sent to you as the registered agent, responsible owners, officers, and/or operators of the Facility. By this letter, pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act, we hereby puts you on notice that after the expiration of sixty (60) days from the date of this letter, we intend to file an enforcement action in federal court against the you for violating the Clean Water Act.

**1. Storm Water Pollution, Compton Creek, and the Los Angeles River**

With every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from Los Angeles Basin Area industrial operations such as the Facility, pour into storm drains, Compton Creek, the Los Angeles River, and ultimately San Pedro Bay and the Pacific Ocean. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering the marine and river environments each year. This discharge of pollutants from industrial facilities in storm water contributes to the impairment of downstream waters. A water body is impaired if it is unable to support its beneficial uses.

Current operational, intentional discharge, and material handling practices at operations such as the Facility create a potential source of significant quantities of toxic pollutants, such as heavy metals, total cadmium, chromium, copper, iron, 1 cad, nickel and zinc. Some of the most common kinds of pollutants potentially exposed to storm water at facilities that manufacture knives include, but are not limited to: arsenic solids, pH, and aluminum. Other pollutants associated with activities commonly conducted at knife manufacturing facilities generally include, but are not limited to: heavy metals such as zinc, copper, lead, cadmium, and chromium, and suspended solids.

Compton Creek, which receives discharges from the Facility, is listed as impaired by copper, lead, and coliform, two of the constituents that the Facility discharges. Likewise, the Los Angeles River, which receives the flow of Compton Creek and thus the discharges from the Facility, is listed as also impaired for copper and lead, as well as zinc, another pollutant that the Facility discharges. The Los Angeles Regional Water Quality Control Board has determined that downstream of the Facility the existing beneficial uses of Compton Creek include groundwater recharge (GWR), water contact recreation<sup>2</sup> (REC I), non-contact water recreation (REC 2), warm freshwater habitat (WARM), wildlife habitat (WILD), and wetland habitat (WET). The existing beneficial uses of the Los Angeles River downstream from the confluence with Compton Creek include GWR, REC 1, REC 2, marine habitat, MAR, WARM, WILD, rare threatened, or endangered species (RARE), and WET. Unfortunately, elevated levels of pollutants including, but not limited to, coliform, copper, lead, pH, and zinc present in discharges to Compton Creek have resulted in the inability for the waterway to support its beneficial uses. Likewise, elevated

<sup>2</sup> The Regional Board recognizes that water contact recreation is an existing beneficial use of Compton Creek and the Los Angeles River despite the fact that the County of Los Angeles has closed Compton Creek and the Los Angeles River to water contact activities. See Basin Plan, Table 2-1, p. 5, note "s."



levels of Aluminum (total), ammonia, cadmium (dissolved), coliform, copper (dissolved), lead, nutrients (algae), odors, oil, pH, scum/foam (unnatural), and zinc (dissolved) have resulted in the inability of the Los Angeles River to support its beneficial uses. Accordingly, the Facility's polluted discharges containing lead, copper, zinc, and coliform cause and/or contribute to the impairment of water quality in Compton Creek and the Los Angeles River. For the Los Angeles area aquatic ecosystem to regain its health, contaminated storm water discharges, including those from the Facility, must be eliminated.

## **2. The Facility**

The Facility is located at 1234 254th St. in Los Angeles County. The Facility is in the business of manufacturing military knives. The Facility engages in the following industrial operations: sharpening, packaging and shipping. The pollutants found to be associated with the Facility operations include, but are not limited to, toxic metals such as barium, chromium, molybdenum, and zinc; petroleum products including oil, fuel, grease, acids, solvents, and fugitive and other dust, dirt and debris. Pollutants from the Facility have leaked causing stains on pavement, and created a white mark from sediments discharged by the Facility on to the storm drain. We are informed that you have been illegally dumping at the rate of approximately twice a week since about November 2010. Photographs taken from the site convey that illegal discharge of metal contaminants contributes to storm water pollution at the site and into area storm drains. The storm drain which the discharge occurred contains approximately 90-100 feet of metal contaminated soil-sediment of drain on-site. However, you have not installed any best management practices ("BMPs") on the Facility to prevent pollutants from leaving the operations, leading to the storm drain. After periods of rainfall, storm water from the Facility discharges directly to the storm drain.

Further, on or about September 23, 2011, we collected a storm water sample intentionally discharged near drain. The storm water collected was analyzed for total metals. The results indicate levels of barium, chromium, molybdenum, iron, and zinc that are orders of magnitude above the standards set forth in the United States Environmental Protection Agency (1986), *Ambient Water Quality Criteria for Bacteria – 1986*.

The pollution control measures at the Facility appears to be effective in controlling the exposure of pollutant sources to storm water at the Facility, except with the intentional discharges of metal sludge residual to the storm drain. This action circumvents all storm water controls and BMPs in place to prevent storm water and non-storm water from contacting the pollutant sources at the loading dock and driveway of the Facility. The BMPs at the Facility is a failure due to the illegal discharge of metal contaminants into the storm drain at the subject site. Therefore, storm water discharges from the Facility contain pollutant concentration levels that are consistently above both EPA Benchmarks<sup>3</sup> and applicable Water

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<sup>3</sup> EPA Benchmarks are the pollutant concentration levels for various pollutants, including many of those associated with knife manufacturing facilities, that the EPA has determined indicates that a facility has not successfully developed and/or implemented BMPs that meet Best Available Technology Economically Achievable



Quality Standards.<sup>4</sup> As explained below, these failures and the resulting discharges of pollutants from the Facility are violations of the Clean Water and the Storm Water Permit. More importantly, these failures have resulted in and continue to contribute to the degradation of the Los Angeles River, the San Pedro Bay and the Pacific Ocean.

### **3. Violations of the Clean Water Act and the Storm Water Permit**

Under the Clean Water Act, the discharge of any pollutant to a water of the United States is unlawful except in compliance with certain provisions of the Clean Water Act. *See* 33 U.S.C. §1311(a). In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 126(c)(1); Storm Water Permit, Fact Sheet p. vii. A failure to comply with the Storm Water Permit is a violation of the Clean Water Act Storm Water Permit, Section C.1. As explained herein, information available to us indicate that you have failed and continue to fail to comply with the substantive and procedural provisions of the Storm Water Permit. As such, they are in violation of the Storm Water Permit and the Clean Water Act.

### **4. The Facility's Discharges of Contaminated Storm Water in Violation of the Storm Water Permit's Discharge Prohibitions and Receiving Water Limitations**

Discharge Prohibition A(2) of the Storm Water Permit prohibits storm water discharges and authorized non-storm water discharges which cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the Storm Water Permit prohibits storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges, which cause or contribute to an exceedance of any water quality standards, such as the CTR or the applicable Basin Plan water quality standards. If a discharger is violating Water Quality Standards, as are the Facility's owner and/or operator, the Storm Water Permit and the Clean Water Act require that the discharger implement more stringent controls necessary to meet such Water Quality Standards. Storm Water Permit, Fact Sheet p. viii; 33 U.S.C. § 1311(b)(1)(C).

As demonstrated by sample data available to us, from at least September 23, 2011 through the present, the Facility has discharged and continues to discharge storm water containing pollutants at levels in violation of the above listed prohibitions and limitations. Every

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("BAT") for toxic pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. *See* Storm Multi-Sector Permit, 65 Federal Register 64839.

<sup>4</sup> Water Quality Standards are pollutant concentration levels determined by the State Water Resources Control Board and the EPA to be protective of the beneficial uses of the receiving waters. Discharges above Water Quality Standards contribute to the impairment of the receiving waters' beneficial uses. Applicable Water Quality Standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. section 131.38, ("California Toxics Rule" or "CTR").



day that the Facility discharges or continues to discharge polluted storm water in violation of the Discharge Prohibitions and Receiving Water Limitations of the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). These violations are ongoing and your violations will continue each day contaminated storm water is discharged in violation of the requirements of the Storm Water Permit. We will include additional violations when information becomes available. You are subject to civil penalties for all violations of the Clean Water Act occurring since at least September 23, 2011.

**5. Failure to Develop and/or Implement BMPs that Achieve Compliance with Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology**

Effluent Limitation (B)(3) of the Storm Water Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of the BAT for toxic pollutants<sup>5</sup> and BCT for conventional pollutants.<sup>6</sup> As explained above, discharges with pollutant concentration levels above EPA Benchmarks demonstrate that a facility has failed to develop and/or implement BMPs that achieve compliance with BAT for toxic pollutants and BCT for conventional pollutants. Sampling of the Facility's owners and/or operators' storm water discharges as well as our observations and photographs of the Facility demonstrate that you have not developed and/or implemented BMPs that meet the standards of BAT/BCT. Thus, you are in violation of Effluent Limitation (B)(3) of the Storm Water Permit.

Every day that you operate with inadequately developed and/or implemented BMPs in violation of the BAT/BCT requirements in the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). You have been in daily and continuous violation of the BAT/BCT requirements of the Storm Water Permit every day since at least September 23, 2011. These violations are ongoing and you will continue to be in violation every day they fail to develop and/or implement BMPs that achieve BAT/BCT to prevent or reduce pollutants associated with industrial activity in storm water discharges at the Facility. You are subject to penalties for all violations of the Storm Water Permit and the Clean Water Act occurring since at least September 23, 2011. Thus, you are liable for civil penalties for violations of the Storm Water Permit and the Act.

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<sup>5</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, zinc, and polychlorinated biphenyls.

<sup>6</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biological oxygen demand, total suspended solids, oil and grease, pH, and fecal coliform.



**6. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan**

Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objective behind the SWPPP requirements is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Facility, and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. Storm Water Permit, Section A(2). To ensure its effectiveness, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Permit. Storm Water Permit, Section A(9), (10).

Section A(3) - A(10) of the Storm Water Permit sets forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity, Section A(4); a list of significant materials handled and stored at the site, Section A(5); and, a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources and a description of locations where soil erosion may occur, Section A(6). Sections A(7) and (8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective.

Our observations of the conditions at the Facility and sampling of storm water discharges from the Facility, which are set forth in detail above, indicate that you have not developed and/or implemented an adequate SWPPP that meets the requirements of Section A of the Storm Water Permit.

Every day you operate the Facility with an inadequately developed and/or implemented SWPPP is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). You have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements every day since at least September 23, 2011. These violations are ongoing and you will continue to be in violation every day that they fail to revise, develop, and/or implement an adequate SWPPP for the Facility. You are subject to penalties for all violations of the Storm Water Permit and the Clean Water Act occurring since at least September 23, 2011. Thus, you are liable for civil penalties for violations of the Storm Water Permit and the Act.

**7. Penalties for Violations of the Clean Water Act and Relief Sought**

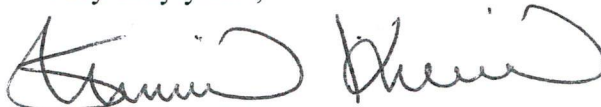
Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date upon which we serve our notice of intent to file suit. These provisions of law authorize civil penalties for each separate violation of the Clean Water Act of up to \$27,500 per day per violation and civil penalties of up to \$32,500 per day per violation for all CWA violations. In addition to civil penalties, we will seek injunctive relief preventing future violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs, including attorneys' and experts' fees.

**8. Conclusion**

Upon expiration of the 60-day notice period, we will file a citizen suit under Section 505(a) of the Clean Water Act for the above-referenced violations. During the 60-day notice period, however, we are willing to discuss effective remedies for the violations noted in this letter, including payment of civil penalties. If you wish to pursue such discussions in the absence of litigation, it is suggested that you initiate those discussions immediately. If good faith negotiations are not being made, at the close of the 60-day notice period, we will move forward expeditiously with litigation.

Please govern yourself accordingly.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Shirin R. Kiaei', is written over a horizontal line.

Shirin R. Kiaei, for  
DONGELL LAWRENCE FINNEY LLP

SRK:sd



Notice of Violation and Intent to File Suit  
July 9, 2012  
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